



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation on October 20, 2004

**NOTICE OF ACTION TAKEN – DOCKET OST 1997-2828**

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: AIR PACIFIC LIMITED

Date Filed: October 18, 2004

Relief requested: Exemption from 49 U.S.C § 41301 to permit the applicant to continue to conduct scheduled, combination services between Nadi, Fiji, and the two U.S. coterminal points Los Angeles, California, and Honolulu, Hawaii, via Auckland, New Zealand, and beyond the two U.S. coterminal points to and from the two Canadian coterminal points Toronto and Vancouver.<sup>1</sup>

Date and citation of last action: The applicant most recently held this authority by Notice of Action Taken on September 15, 2003. (See Docket OST-1997-2828).

Applicant representative: Thomas J. Whalen, 202-289-0500

DOT analyst: Brian J. Hedberg, 202-366-7783

Responsive pleadings: None.

**DISPOSITION**

Action: Approved.

Action date: October 20, 2004

Effective dates of authority granted: October 20, 2004, through April 16, 2005

Basis for approval (bilateral agreement/reciprocity): United States-Fiji Air Transport Agreement. The authority to serve Toronto, however, is based on the existence of adequate reciprocity with Fiji.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations of our standard exemption conditions (attached) and to the otherwise-applicable terms, conditions, and limitations of Air Pacific's foreign air carrier permit (Order 81-4-93).

Special conditions/Remarks: By this Notice we grant, as conditioned and limited in duration, the request of Air Pacific Limited to conduct the above-described operations through April 16, 2005 (that is, for a duration of 179 days). This authority, effective from October 20, 2004, through April 16, 2004, is not a license with reference to an activity of a continuing nature, within the meaning of 5 U.S.C. § 558(c).

**Action taken by: Paul L. Gretch, Director  
Office of International Aviation**

Under authority assigned by the Department in its regulations, 14 C.F.R. § 385, we found that (1) our action was consistent with Department policy; (2) the applicant was qualified to perform its proposed operations; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 C.F.R. §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:*  
[http://dms.dot.gov/reports/reports\\_aviation.asp](http://dms.dot.gov/reports/reports_aviation.asp)

<sup>1</sup> Together with its application, Air Pacific Limited also filed a motion requesting the Department to shorten the answer period. By letter dated October 19, 2004, the applicant asserted that it had completed a poll of U.S. carriers, and received no objections. In light of this letter, we are dismissing the motion.

In the conduct of the operations authorized, the foreign carrier applicant(s) shall:

- 1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- 2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its International Principal Security Inspector (IPSI) to advise the IPSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- 3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- 4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- 5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- 6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- 7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. § 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:  
a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- 8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- 9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- 10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- 11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.